

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION

KATHERINE A. HOOVER, as the
duly appointed Administrator
of the Estate of Michael
Tomasic, deceased,

Plaintiff,

v.

CIVIL ACTION NO.: 1:07-cv-00047 MK

WEST VIRGINIA REGIONAL JAIL AND
CORRECTIONAL FACILITY AUTHORITY,
a State statutorily created agency,
GEORGE TRENT, Administrator,
North Central Regional Jail,
ROGER ELDER, Lieutenant,
North Central Regional Jail,
THOMAS MCCRAY, Sergeant,
North Central Regional Jail,
LISLE ELDER, Correctional Officer II,
North Central Regional Jail,
WESLEY STEWART, Correctional Officer II,
North Central Regional Jail,
TIMOTHY "SCOTT" GAIN,
Correctional Officer II,
North Central Regional Jail,
JOHN and JANE DOES 1-10,
Unidentified individuals working at
North Central Regional Jail,

Defendants.

**PROPOSED ORDER GRANTING PERMISSION AND AUTHORITY
TO COMPROMISE AND SETTLE CLAIM**

On the _____ day of _____, 2009, came your Petitioner, Katherine A. Hoover, as Administratrix of the Estate of Michael Tomasic, by and through counsel, The Masters Law Firm Ic and defendants West Virginia Regional Jail and Correctional

Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder, Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart, Correctional Officer II, North Central Regional Jail, Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10, Unidentified Individuals Working At North Central Regional Jail, for purposes of requesting Court approval for the settlement of the wrongful death claim and the dismissal of said actions against the named defendant herein. Upon the representations and arguments of counsel, the testimony of Katherine A. Hoover, the pleadings and the Petition filed herein, this Court finds as follows:

FINDINGS OF FACT

8. That Katherine A. Hoover, as Administratrix of the Estate of Michael Tomasic, be GRANTED permission to settle any and all claims that have been, could have been, or could be asserted on behalf of the Estate of Michael Tomasic., potential beneficiaries, takers and claimants to this settlement, and the potential claimants for the wrongful death of Michael Tomasic, against defendants West Virginia Regional Jail and Correctional Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder, Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart, Correctional Officer II, North Central Regional Jail,

Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10, Unidentified Individuals Working At North Central Regional Jail, and any entity or individual associated with these entities; and to accept the aforesaid settlement, the total amount of which is the sum of SEVEN-HUNDRED, FIFTY THOUSAND DOLLARS (\$750,000.00), as set forth above, in full and final settlement of all such claims against defendants West Virginia Regional Jail and Correctional Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder, Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart, Correctional Officer II, North Central Regional Jail, Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10, Unidentified Individuals Working At North Central Regional Jail.

2. That the settlement, as described above, of all claims by Katherine A. Hoover, as Administratrix of the Estate of Michael Tomasic, on behalf of the Estate of Michael Tomasic, the potential beneficiaries, takers and claimants to this settlement, and the potential claimants for the wrongful death of Michael Tomasic against defendants West Virginia Regional Jail and Correctional Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder,

Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart, Correctional Officer II, North Central Regional Jail, Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10, Unidentified Individuals Working At North Central Regional Jail, is approved as a fair, reasonable and just settlement in the best interest of all those associated with this matter.

3. That the settlement and distribution of money set forth in the Petition is approved as fair, reasonable and just, and that such settlement and distribution is in the best interests of the Estate of Michael Tomasic, all those surviving Michael Tomasic as outlined in the "Petition for Permission and Authority to Compromise and Settle Claim."
4. That the Petitioner, Katherine A. Hoover, as Administratrix of the Estate of Michael Tomasic, on behalf of the Estate of Michael Tomasic, is empowered to execute and deliver to the defendants, West Virginia Regional Jail and Correctional Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder, Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart, Correctional Officer II, North Central Regional Jail, Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10,

Unidentified Individuals Working At North Central Regional Jail, a full and complete release of all claims of the Estate of Michael Tomasic, any potential beneficiaries, takers, and claimants to this settlement, and the potential claimants for the wrongful death of Michael Tomasic, and any claims of his surviving family, that were or could have been alleged in the Complaint or any other claims arising out of or as a result of the injuries and death sustained by Michael Tomasic except insofar as this settlement has no bearing on any criminal proceedings which may arise from the treatment of Michael Tomasic stemming from the incidents of September 29 and 30, 2005.

5. That all claims, potential, referenced, asserted, and/or not asserted, of and on behalf of the Estate of Michael Tomasic, any potential beneficiaries, takers and claimants to this settlement, the potential claimants for the wrongful death of Michael Tomasic, and any claims of his surviving family, as such claims relate to the alleged product negligence, wrongful death, gross, intentional, willful and wanton conduct, maliciousness, recklessness, carelessness and any other actions of defendants West Virginia Regional Jail and Correctional Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder, Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart, Correctional Officer II, North Central Regional Jail,

Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10, Unidentified Individuals Working At North Central Regional Jail, are hereafter and forever extinguished except insofar as this settlement has no bearing on any criminal proceedings which may arise from the treatment of Michael Tomasic stemming from the incidents of September 29 and 30, 2005.

8. That the settlement amount be distributed as set forth below:

Katherine A. Hoover	\$ <u>191,775.75</u>
John F. Tomasic	\$ <u>191,775.75</u>
Stephen Joseph Tomasic	\$ <u>5,000.00</u>
John Tomasic	\$ <u>5,000.00</u>
William Tomasic	\$ <u>5,000.00</u>
Kathleen Busse	\$ <u>5,000.00</u>
Marianne Tomasic	\$ <u>5,000.00</u>
The Masters Law Firm Ic	\$ <u>341,448.50</u>

7. That this Petition represents a final and complete request for permission to settle the wrongful death claim of Petitioner, Katherine A. Hoover, as Administratrix of the Estate of Michael Tomasic against defendants West Virginia Regional Jail and Correctional Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder, Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart,

Correctional Officer II, North Central Regional Jail, Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10, Unidentified Individuals Working At North Central Regional Jail, and is hereby executed and filed in good faith and with full knowledge of the facts and circumstances surrounding said death of Michael Tomasic, and the assertions, claims, and defenses alleged in this litigation.

8. That this Petition and request for settlement approval is in accordance with West Virginia law and that the Court finds it was a good faith settlement.
9. It is further ORDERED that defendants West Virginia Regional Jail and Correctional Facility Authority, A State Statutorily Created Agency, George Trent, Administrator, North Central Regional Jail, Roger Elder, Lieutenant, North Central Regional Jail, Thomas McCray, Sergeant, North Central Regional Jail, Lisle Elder, Correctional Officer II, North Central Regional Jail, Wesley Stewart, Correctional Officer II, North Central Regional Jail, Timothy "Scott" Gain, Correctional Officer II, North Central Regional Jail, John And Jane Does 1-10, Unidentified Individuals Working At North Central Regional Jail, be DISMISSED from this Civil Action with prejudice, as to any and all claims plaintiff may have to them arising out of this case except insofar as this settlement has no bearing on any criminal proceedings which may arise from the treatment of Michael Tomasic stemming from the incidents of September 29 and 30, 2005..

10. It is further ORDERED that the Clerk mail a certified copy of this Order to all counsel of record.

ENTERED this _____ day of _____, 2009.

HONORABLE, JOHN S. KAULL, JUDGE

PREPARED BY:

/s/Charles M. Love, IV
Marvin W. Masters, Esquire
West Virginia State Bar No. 2359
Charles M. Love, IV, Esquire
West Virginia State Bar No. 7477
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Defendants.

CERTIFICATE OF SERVICE

I, Charles M. Love, IV, counsel for plaintiff, do hereby certify that I electronically
filed the foregoing "Proposed Order Granting Permission and Authority to
Compromise and Settle Claim" with the Clerk of the Court using the CM/ECF system

and I hereby certify that true and exact copies of "Proposed Order Granting Petition for Permission and Authority to Compromise and Settle Claim" were served upon:

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Authority, George Trent, Roger Elder,
Thomas McCray, Lisle Elder, Wesley
Stewart and Timothy "Scott" Gain

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via electronic filing 8th day of August, 2009.

/s/Charles M. Love, IV
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